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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RITA GARCIA, individually, and on behalf of all others similarly situated,

Plaintiff,

VS.

PRAXAIR, INC., a Delaware corporation; PRAXAIR DISTRIBUTION, INC., a Delaware corporation; and DOES 1 through 10, inclusive,

Defendants

Case No.: 2:18-cv-08170-JAK (AFMx)

CLASS ACTION

**{PROPOSED} ORDER ENTERING
STIPULATED PROTECTIVE ORDER**

Action Filed: May 18, 2018
Trial date: Not set

1 Plaintiff RITA GARCIA (“Plaintiff”) and Defendants PRAXAIR, INC., and
2 PRAXAIR DISTRIBUTION, INC. (“Defendants”) (collectively, the “Parties”), through
3 their respective counsel of record, stipulated to the entry of a Protective Order on the
4 terms and conditions set forth in the Parties’ Stipulated Protective Order, filed on April
5 12, 2019.

6 That stipulation provides as follows:

7 Plaintiff RITA GARCIA (“Plaintiff”) and defendants PRAXAIR, INC., and
8 PRAXAIR DISTRIBUTION, INC. (“Defendants”) (jointly, the “Parties”), stipulate to
9 the entry of a Protective Order in this matter as follows:

10 1. PURPOSES AND LIMITATIONS

11 Disclosure and discovery activity in this action are likely to involve production of
12 confidential, proprietary, or private information for which special protection from public
13 disclosure and from use for any purpose other than prosecuting this litigation may be
14 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
15 following Stipulated Protective Order. The parties acknowledge that this Order does not
16 confer blanket protections on all disclosures or responses to discovery and that the limited
17 protection it affords from public disclosure and use extends only to the limited
18 information or items that are entitled to confidential treatment under the applicable legal
19 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
20 Stipulated Protective Order does not entitle them to file confidential information under
21 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the
22 standards that will be applied when a party seeks permission from the court to file material
23 under seal.

24 2. DEFINITIONS

25 2.1. Challenging Party: a Party or Non-Party that challenges the designation of
26 information or items under this Order.

27 2.2. “CONFIDENTIAL” Information or Items: information (regardless of how
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1 it is generated, stored or maintained) or tangible things that qualify for protection under
2 Federal Rule of Civil Procedure 26(c).

3 2.3. Counsel (without qualifier): Outside Counsel of Record and House Counsel
4 (as well as their support staff).

5 2.4. 2.4 Designating Party: a Party or Non-Party that designates information
6 or items that it produces in disclosures or in responses to discovery as
7 "CONFIDENTIAL."

8 2.5. Disclosure or Discovery Material: all items or information, regardless of
9 the medium or manner in which it is generated, stored, or maintained (including, among
10 other things, testimony, transcripts, and tangible things), that are produced or generated
11 in disclosures or responses to discovery in this matter.

12 2.6. Expert: a person with specialized knowledge or experience in a matter
13 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
14 expert witness or as a consultant in this action.

15 2.7. House Counsel: attorneys who are employees of a party to this action.
16 House Counsel does not include Outside Counsel of Record or any other outside counsel.

17 2.8. Non-Party: any natural person, partnership, corporation, association, or
18 other legal entity not named as a Party to this action.

19 2.9. Outside Counsel of Record: attorneys who are not employees of a party to
20 this action but are retained to represent or advise a party to this action and have appeared
21 in this action on behalf of that party or are affiliated with a law firm which has appeared
22 on behalf of that party.

23 2.10. Party: any party to this action, including all of its officers, directors,
24 employees, consultants, retained experts, and Outside Counsel of Record (and their
25 support staffs).

26 2.11. Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this action.

1 2.12. Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
4 their employees and subcontractors.

5 2.13. Protected Material: any Disclosure or Discovery Material that is designated
6 as "CONFIDENTIAL."

7 2.14. Receiving Party: a Party that receives Disclosure or Discovery Material
8 from a Producing Party.

9 3. SCOPE

10 The protections conferred by this Stipulation and Order cover not only Protected
11 Material (as defined above), but also (1) any information copied or extracted from
12 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
13 Material; and (3) any testimony, conversations, or presentations by Parties or their
14 Counsel that might reveal Protected Material. However, the protections conferred by this
15 Stipulation and Order do not cover the following information: (a) any information that is
16 in the public domain at the time of disclosure to a Receiving Party or becomes part of the
17 public domain after its disclosure to a Receiving Party as a result of publication not
18 involving a violation of this Order, including becoming part of the public record through
19 trial or otherwise; and (b) any information known to the Receiving Party prior to the
20 disclosure or obtained by the Receiving Party after the disclosure from a source who
21 obtained the information lawfully and under no obligation of confidentiality to the
22 Designating Party. Any use of Protected Material at trial shall be governed by a separate
23 agreement or order of the trial judge.

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
27 writing or a court order otherwise directs. Final disposition shall be deemed to be the later
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1 of (1) dismissal of all claims and defenses in this action, with or without prejudice; and
2 (2) final judgment herein after the completion and exhaustion of all appeals, rehearings,
3 remands, trials, or reviews of this action, including the time limits for filing any motions
4 or applications for extension of time pursuant to applicable law.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1. Exercise of Restraint and Care in Designating Material for Protection.** Each
7 Party or Non-Party that designates information or items for protection under this Order
8 must take care to limit any such designation to specific material that qualifies under the
9 appropriate standards. The Designating Party must designate for protection only those
10 parts of material, documents, items, or oral or written communications that qualify – so
11 that other portions of the material, documents, items, or communications for which
12 protection is not warranted are not swept unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that
14 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
15 to unnecessarily encumber or retard the case development process or to impose
16 unnecessary expenses and burdens on other parties) expose the Designating Party to
17 sanctions.

18 If it comes to a Designating Party's attention that information or items that it
19 designated for protection do not qualify for protection, that Designating Party must
20 promptly notify all other Parties that it is withdrawing the mistaken designation.

21 **5.2. Manner and Timing of Designations.** Except as otherwise provided in this
22 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
23 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
24 must be clearly so designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic documents, but
27 excluding transcripts of depositions or other pretrial or trial proceedings), that the

1 Producing Party affix the legend “CONFIDENTIAL” to each page that contains protected
2 material. If only a portion or portions of the material on a page qualifies for protection,
3 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
4 appropriate markings in the margins).

5 A Party or Non-Party that makes original documents or materials available for
6 inspection need not designate them for protection until after the inspecting Party has
7 indicated which material it would like copied and produced. During the inspection and
8 before the designation, all of the material made available for inspection shall be deemed
9 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
10 copied and produced, the Producing Party must determine which documents, or portions
11 thereof, qualify for protection under this Order. Then, before producing the specified
12 documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page
13 that contains Protected Material. If only a portion or portions of the material on a page
14 qualifies for protection, the Producing Party also must clearly identify the protected
15 portion(s) (e.g., by making appropriate markings in the margins).

16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
17 the Designating Party identify on the record, before the close of the deposition, hearing,
18 or other proceeding, all protected testimony.

19 (c) for information produced in some form other than documentary and for any
20 other tangible items, that the Producing Party affix in a prominent place on the exterior
21 of the container or containers in which the information or item is stored the legend
22 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
23 protection, the Producing Party, to the extent practicable, shall identify the protected
24 portion(s).

25 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
26 to designate qualified information or items does not, standing alone, waive the
27 Designating Party’s right to secure protection under this Order for such material. Upon
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1 timely correction of a designation, the Receiving Party must make reasonable efforts to
2 assure that the material is treated in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1. **Timing of Challenges.** Any Party or Non-Party may challenge a designation
5 of confidentiality at any time. Unless a prompt challenge to a Designating Party's
6 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
7 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
8 Party does not waive its right to challenge a confidentiality designation by electing not to
9 mount a challenge promptly after the original designation is disclosed.

10 6.2. **Meet and Confer.** The Challenging Party shall initiate the dispute resolution
11 process by providing written notice of each designation it is challenging and describing
12 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made,
13 the written notice must recite that the challenge to confidentiality is being made in
14 accordance with this specific paragraph of the Protective Order. The parties shall attempt
15 to resolve each challenge in good faith and must begin the process by conferring directly
16 (in voice to voice dialogue; other forms of communication are not sufficient) within 14
17 days of the date of service of notice. In conferring, the Challenging Party must explain
18 the basis for its belief that the confidentiality designation was not proper and must give
19 the Designating Party an opportunity to review the designated material, to reconsider the
20 circumstances, and, if no change in designation is offered, to explain the basis for the
21 chosen designation. A Challenging Party may proceed to the next stage of the challenge
22 process only if it has engaged in this meet and confer process first or establishes that the
23 Designating Party is unwilling to participate in the meet and confer process in a timely
24 manner.

25 6.3. **Judicial Intervention.** If the Parties cannot resolve a challenge without court
26 intervention, the Designating Party shall file and serve a motion to retain confidentiality
27 under within 21 days of the initial notice of challenge or within 14 days of the parties
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1 agreeing that the meet and confer process will not resolve their dispute, whichever is
2 earlier. Each such motion must comply with Local Rule 37-2 and must be accompanied
3 by a competent declaration affirming that the movant has complied with the meet and
4 confer requirements imposed in the preceding paragraph. Failure by the Designating Party
5 to make such a motion including the required declaration within 21 days (or 14 days, if
6 applicable) shall automatically waive the confidentiality designation for each challenged
7 designation. In addition, the Challenging Party may file a motion challenging a
8 confidentiality designation at any time if there is good cause for doing so, including a
9 challenge to the designation of a deposition transcript or any portions thereof. Any motion
10 brought pursuant to this provision must comply with Local Rule 37-2 and must be
11 accompanied by a competent declaration affirming that the movant has complied with the
12 meet and confer requirements imposed by the preceding paragraph.

13 The burden of persuasion in any such challenge proceeding shall be on the
14 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
15 to harass or impose unnecessary expenses and burdens on other parties) may expose the
16 Challenging Party to sanctions. Unless the Designating Party has waived the
17 confidentiality designation by failing to file a motion to retain confidentiality as described
18 above, all parties shall continue to afford the material in question the level of protection
19 to which it is entitled under the Producing Party's designation until the court rules on the
20 challenge.

21 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 **7.1. Basic Principles.** A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a Non-Party in connection with this case
24 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
25 Material may be disclosed only to the categories of persons and under the conditions
26 described in this Order. When the litigation has been terminated, a Receiving Party must
27 comply with the provisions of section 13 below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
5 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
6 may disclose any information or item designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
8 employees of said Outside Counsel of Record to whom it is reasonably necessary to
9 disclose the information for this litigation and who have signed the “Acknowledgment
10 and Agreement to Be Bound” that is attached hereto as Exhibit A;

11 (b) the officers, directors, and employees (including House Counsel) of the
12 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
13 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
15 is reasonably necessary for this litigation and who have signed the “Acknowledgment and
16 Agreement to Be Bound” (Exhibit A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial consultants, mock
19 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
20 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
21 (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
24 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
25 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
26 Protected Material must be separately bound by the court reporter and may not be
27 disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-

1 Parties in connection with this litigation is protected by the remedies and relief provided
2 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party
3 from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to produce a
5 Non-Party's confidential information in its possession, and the Party is subject to an
6 agreement with the Non-Party not to produce the Non-Party's confidential information,
7 then the Party shall:

8 (1) promptly notify in writing the Requesting Party and the Non-Party that some
9 or all of the information requested is subject to a confidentiality agreement with a Non-
10 Party;

11 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order
12 in this litigation, the relevant discovery request(s), and a reasonably specific description
13 of the information requested; and

14 (3) make the information requested available for inspection by the Non-Party.

15 (c) If the Non-Party fails to object or seek a protective order from this court within
16 14 days of receiving the notice and accompanying information, the Receiving Party may
17 produce the Non-Party's confidential information responsive to the discovery request. If
18 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
19 information in its possession or control that is subject to the confidentiality agreement
20 with the Non-Party before a determination by the court. Absent a court order to the
21 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
22 court of its Protected Material.

23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
27 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
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1 all unauthorized copies of the Protected Material, (c) inform the person or persons to
2 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
3 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
4 that is attached hereto as Exhibit A.

5 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
6 **PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of
9 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
10 This provision is not intended to modify whatever procedure may be established in an e-
11 discovery order that provides for production without prior privilege review. Pursuant to
12 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
13 effect of disclosure of a communication or information covered by the attorney-client
14 privilege or work product protection, the parties may incorporate their agreement in the
15 stipulated protective order submitted to the court.

16 **12. MISCELLANEOUS**

17 **12.1. Right to Further Relief.** Nothing in this Order abridges the right of any
18 person to seek its modification by the court in the future.

19 **12.2. Right to Assert Other Objections.** By stipulating to the entry of this
20 Protective Order no Party waives any right it otherwise would have to object to disclosing
21 or producing any information or item on any ground not addressed in this Stipulated
22 Protective Order. Similarly, no Party waives any right to object on any ground to use in
23 evidence of any of the material covered by this Protective Order.

24 **12.3. Filing Protected Material.** Without ~~written permission from the Designating~~
25 ~~Party or~~ a court order secured after appropriate notice to all interested persons, a Party
26 may not file in the public record in this action any Protected Material. A Party that seeks
27 to file under seal any Protected Material must comply with Civil Local Rule 79-5.2.2.
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1 Protected Material may only be filed under seal pursuant to a court order authorizing the
2 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5.2.2,
3 a sealing order will issue only upon a request establishing that the Protected Material at
4 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under
5 the law. If a Receiving Party's request to file Protected Material under seal pursuant to
6 Civil Local Rule 79-5.2.2 is denied by the court, then the Receiving Party may file the
7 information in the public record pursuant to Civil Local Rule 79-5.2.2 unless otherwise
8 instructed by the court.

9 13. FINAL DISPOSITION

10 Within 60 days after the final disposition of this action, as defined in paragraph 4,
11 each Receiving Party must return all Protected Material to the Producing Party or destroy
12 such material. As used in this subdivision, "all Protected Material" includes all copies,
13 abstracts, compilations, summaries, and any other format reproducing or capturing any of
14 the Protected Material. Whether the Protected Material is returned or destroyed, the
15 Receiving Party must submit a written certification to the Producing Party (and, if not the
16 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
17 (by category, where appropriate) all the Protected Material that was returned or destroyed
18 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
19 compilations, summaries or any other format reproducing or capturing any of the
20 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
21 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
22 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
23 work product, and consultant and expert work product, even if such materials contain
24 Protected Material. Any such archival copies that contain or constitute Protected Material
25 remain subject to this Protective Order as set forth in Section 4 (DURATION).

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of Garcia v. Praxair, Inc., et al., Case No. 2:18-cv-08170-JAK (AFMx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name:

1 Signature: _____

2 Upon review of the Parties' Stipulated Protective Order, IT IS HEREBY
3 ORDERED that the stipulation is **GRANTED**.

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5 **IT IS SO ORDERED.**

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7 Dated: 4/16/2019



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Alexander F. MacKinnon
UNITED STATES MAGISTRATE
JUDGE